IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : LAND ACQUISITION ACT

WRIT PETITION (C) No. 9547 of 2006

Reserved on: July 25, 2007

Date of decision: September 7, 2007

and CM Nos. 7146/2006 and 13418/2006

MANJIT SINGH BEDI .....Petitioner
Through Mr.B.T.Singh,
Advocate.

versus

GOVT. OF NCT OF DELHI and ORS. ..... Respondents
Through Mr. Amitabh Marwah for R-1 to R-3.

Dr. S.MURALIDHAR, J.

1. The Petitioner seeks two reliefs. The first is that a direction should be issued to Respondent No.2, the Chief Engineer, Irrigation and Flood Control Department (FCD), Government of National Capital Territory of Delhi ('GNCTD'), to hand over to him the vacant possession of property measuring 1 bigha located in khasra No. 22/6/2/2 located in village Dabri, Vashisht Park, New Delhi ("land in question"). The second relief is that Respondent No.2 should be directed to pay damages to the Petitioner for being in illegal possession of the land in question since 1996. Background facts

2. An extent of 2 bighas and 10 biswas of land located in khasra No. 22/6/2 in village Dabri was owned by Shri Hoshiar Singh and Shri Sher Singh sons of Shri Kewal of village Dabri. A notification dated 20.6.1966 was issued under Section 4 of the Land Acquisition Act, 1894 for acquisition of 1 bigha and 10 biswas of the aforementioned land. An Award dated 27.6.1968 was made determining the

compensation payable for the extent of 1 bigha and 10 biswas of the land that stood acquired. The said compensation was also received by the recorded owners Shri Hoshiar Singh and Shri Sher Singh.

3. Prior to the Award, by a registered sale deed dated 22.8.1966, Shri Hoshiar Singh and Shri Sher Singh sold 550 sq. yards of the land in khasra No.22/6/2 (Plot Nos. S-66 to S-70) to Shri Hardit Singh. On 24.10.1989, Shri Hardit Singh entered into an agreement to sell with the Petitioner whereby the said plot of 550 sq. yards was agreed to be sold to the Petitioner. The said vendor also executed a Will and General Power of Attorney. A receipt for the payment of the sum of Rs.1.5 lakhs by Petitioner to Shri Hardit Singh was also registered. According to the Petitioner the possession of the plot in question i.e. 550 sq. yards in khasra No. 22/6/2 together with the ownership rights stood transferred in favour of the Petitioner.

4. In respect of another 220 sq. yards of land located in the same khasra No.22/6/2 (plot No.B-26) a sale deed was first executed by the recorded owners Shri Hoshiar Singh and Shri Sher Singh in favour of Shri Kishan Singh. In turn, through an agreement to sell dated 8.11.1991 executed by Shri Kishan Singh in favour of the petitioner, together with a registered will, power of attorney and a registered receipt, the said plot of 220 sq. yards of land in khasra No. 22/6/2 was sold to the Petitioner and possession was also handed over to him.

5. A third parcel of 220 sq. yards in khasra No. 22/6/2 (plot No.B-27) was first sold on 7.1.1969 by a registered sale deed by Shri Hoshiar Singh and Shri Sher Singh in favour of Shri Satish Kumar. On 1.11.1991 Shri Satish Kumar entered into an agreement to sell with the Petitioner here in respect of the said plot No.B-27. A registered will, general power of attorney and receipt for the payment of the consideration were also executed in favour of the petitioner. He was put in possession of this plot as well.

6. According to the petitioner, by virtue of the above three transactions, he was put in possession of 990 sq. yards of land (1 bigha) located in khasra No. 22/6/2. According to him, after being put in possession of the said land he had put up a construction thereon and was enjoying peaceful possession of the said property. The admitted position is that the portion of 1 bigha 10 biswas that stood acquired was assigned Khasra No. 22/6/2/1 and the unacquired portion of 1 bigha (being the land in question) was assigned Khasra No.22/6/2/2.

7. Apprehending interference with his possession of the land in question by the GNCTD, the Petitioner filed Civil Suit No. 1519 of 1995 in the court of Civil Judge, Delhi for a decree of permanent injunction restraining the GNCTD from interfering with his possession of the land in question i.e. plots Nos. S- 66 to S-70, B-26 and B-27 in khasra No.22/6/2/2. The application filed by the petitioner under

Order 39 Rule 1 CPC seeking an interim injunction was dismissed on 11.4.1996 by the learned Civil Judge who in his order observed that the land in question also stood acquired by the GNCTD and that possession had been handed over to the FCD. It was further observed that in terms of the khatoni filed by the defendants (GNCTD), the land in question stood vested in the Gaon Sabha.

8. According to the Petitioner soon after the said dismissal of the application under Order 39, the FCD in April 1996 demolished the structures on the land in question and took possession. The petitioner made a complaint to the Lt. Governor in January 1997 despite which the land in question was not returned to him. He was informed by the Secretary, Revenue in February 1998 that the land in question vested in the Gaon Sabha. On 13.5.1998 he approached the Secretary, Revenue for restoration of the land and he was, in turn, referred to the Chief Engineer, FCD.

9. When no reply was forthcoming, the Petitioner filed Writ Petition (C) No. 7118 of 2000 in this Court which came to be disposed of by a judgment dated 5.8.2002 in which the Division Bench held that as per the land acquisition award only 1 bigha and 10 biswas falling in khasra No. 22/6/2/1 stood acquired. Although the Division Bench accepted the contention of the Petitioner that the remaining 1 bigha of land never stood acquired it declined to grant relief to the petitioner since the issue of title involved adjudication of complicated and disputed facts. Accordingly, liberty as granted to the Petitioner to agitate the issue before the competent authority.

10. The order dated 5.8.2002 passed by the Division Bench makes a note of the fact that a Civil Suit had been filed by the petitioner and further that the application for interim injunction had been dismissed. Nevertheless, the Petitioner was given the liberty to approach the Respondent with a representation and if the Petitioner was still aggrieved, it was left open to him to agitate the issue again in appropriate proceedings. The operative direction contained in the Order dated 5.8.2002 of the Division Bench reads as under: “The only direction which in the facts we are inclined to issue to respondent No.3 is to take appropriate decision in accordance with law within a period of two months from today on the petitioner's representation annexures “J” and “K” and convey the decision to the petitioner. Thereafter, in case the petitioner will still feel aggrieved, it will be open for the petitioner to take recourse to such proceedings as may be permissible in law. Ordered accordingly. The writ petition disposed of.”

11. According to the Petitioner the above order dated 5.8.2002 was not challenged and, therefore, became final. The Respondents were therefore bound to obey the directions issued by the Division Bench. Nevertheless, the requisite steps were not taken and the Petitioner was constrained to file a contempt petition CCP No. 131 of 2003 in this Court. While the said contempt petition was pending the Divisional

Commissioner passed an order on 2.4.2003 disposing of representation of the Petitioner holding that he was not entitled for possession of plot of 1 bigha of land in khasra No. 22/6/2/2.

12. On 19.8.2003, the petitioner filed a second Writ Petition (C) No. 5747 of 2003 challenging the said order dated 2.4.2003 passed by the Divisional Commissioner. The petitioner also prayed that he should be restored the land in question. During the pendency of the Writ Petition (C) No. 5747 of 2003, after verification undertaken on 18.10.2004, the appropriate authority issued No Objection Certificates ('NOCs') in respect of the purchases of the parcels of land by the petitioner in Khasra No.22/6/2/2. Consequently, sale deeds in favour of the Petitioner were duly registered in respect of the land in question measuring 1 bigha. Pending the disposal of the second writ petition, the petitioner made, a further representation to the Secretary Revenue, GNCTD on 2.5.2005. The Respondents informed the Petitioner that they would consider the said representation only if he withdrew the pending writ petition. This led to the petitioner informing this Court during the hearing of Writ Petition (C) No. 5747 of 2003 on 19.7.2005 that he wished to withdraw the writ petition. By order dated 19.7.2005 this Court dismissed the writ petition as withdrawn with liberty to the Petitioner to file a fresh petition challenging the order that would be passed on the representation dated 2.5.2005.

13. On 28.12.1995 the petitioner received a notice from the Tehsildar, Palam asking him and Respondent No.2 to be present for the purposes of demarcating the extent of 1 bigha of land in khasra No. 22/6/2/2. This demarcation took place on an application made by the Petitioner for correction of the revenue record and for demarcation of 1 bigha of land in khasra No. 22/6/2/2. The demarcation proceedings showed that as per the records the extent of 1 bigha and 10 biswas in khasra No. 22/6/2/1 was owned by the Government. As regards the land in question to the extent of 1 bigha in khasra No. 22/6/2/2 it was shown in the name of Gaon Sabha pursuant to an order dated 9.10.1980 passed by the Sub-Divisional Magistrate ('SDM') in proceedings under Section 81 of the Delhi Land Reforms Act ('DLRA') in Case No. 858 of 1979. The remarks in respect of the report of the Patwari made by the Kanoongo on 16.12.2005, records that the ownership of the Petitioner could not be disputed and that notices should be prepared for the Irrigation and Flood Control Department since land in Khasra No. 22/6/2/1 was with them. On 28.12.2005 the demarcation report was prepared in the presence of the FCD. The report enclosed the site plan of khasra No. 22/6/2/2 and stated that the boundary work had been finalised and that there was no dispute in respect of the boundary. The present petition

14. When the petitioner was not put in possession of the land in question despite the above proceedings he filed the third (i.e., the present) writ petition. In response

to the notice directed to issue to it by this Court, a reply was filed on behalf of the Secretary Revenue, GNCTD, Respondent No.3. A preliminary objection was raised to the maintainability of the writ petition on the ground of res judicata. It was pointed out that the Civil Suit No. 1519 of 1995 filed by the petitioner seeking similar relief had been dismissed in default on 27.4.2004 and that the Petitioner did not take steps to have the said suit restored. It was also stated that this fact has been suppressed by the Petitioner. It was then contended that khasra No. 22/6/2 was further sub-divided into two parts. The Tatima prepared at the time of acquisition of the land showed that the land admeasuring 1 bigha and 10 biswas that was acquired was in khasra No. 22/6/2/1 and the portion of 1 bigha that was not acquired was khasra No. 22/6/2/2. This was agricultural land on which there existed illegal structures. This led to the proceedings being initiated under Section 81 DLRA. By an order dated 9.10.1980 passed by the SDM, the said land vested in the Goan Sabha. It is claimed that although the order mentions khasra No.23/6/2, it was a typographical error and it should read as 22/6/2/2.

15.It was further stated in the reply of Respondent No.3 that the land in khasra No. 22/6/2/2 was not vacant but was fully encroached and built up. It was denied that the land was in possession of the FCD. It was claimed that the demarcation took place due to some manipulation by the Petitioner and that the aforesaid application for demarcation was never presented to the Deputy Commissioner but directly presented to the Tehsildar, Palam. It is claimed that the whole of khasra No. 22/6/2 is Government land partly due to acquisition and partly due to vesting in the Gaon Sabha. Therefore, the question of demarcation did not arise.

16. A separate counter affidavit has been filed by the Irrigation and Flood Control Department, Respondent No.2 in which it is stated that the revenue record does not show Respondent No.2 as owner in relation to the land in question. It was maintained that the entry in the revenue records in relation to the land in question pertains only to the Department of Revenue. The FCD categorically denied being in possession of the land in question.

17. The Petitioner filed a rejoinder in which he denied suppressing the fact of filing the suit and the dismissal of the application for interim injunction since these were mentioned in the list of dates. He further pointed out that a similar objection had been taken by the Respondents in Writ Petition (C) No. 7118 of 2000 as well. It is only after considering those objections that the judgment dated 5.8.2002 was passed and, therefore, the question of res judicata cannot arise in view of the specific directions issued by this Court in the said judgment. Reference was made to the orders passed by this Court in CCP No. 131 of 2003. The Petitioner also raised a legal issue whether land that stood acquired under the LAC could be vested in the Gaon Sabha under Section 81 DLRA. He also pointed out that Vashisht Park, in which the land in question is located was regularised by the

Standing Committee on 24.1.1983 long before the property was purchased by the Petitioner. He enclosed with the rejoinder affidavit a list of the unauthorised colonies with the dates of their regularisation. He also relied on the demarcation report in which the revenue authorities themselves had recognised that the Petitioner had purchased the land in question through valid sale deeds. Is the petition barred by res judicata"

18. The first issue that requires to be decided is whether the present writ petition is barred by the principle of res judicata since the earlier Suit No. 1519 of 1995 filed by the Petitioner stood dismissed in default on 27.4.2004 It further requires to be considered if this fact and the fact of dismissal of the application for interim injunction under Order 39 CPC have been suppressed in the writ petition. This Court finds that although there is no mention of these facts in the main body of the writ petition, the Petitioner has in the list of dates indicated the fact that the Suit was filed and the application for interim injunction under Order 39 Rule 1 was dismissed in April 1996. To this extent it cannot be said that the Petitioner had wilfully suppressed these facts in the present writ petition. As regards the dismissal in default of the Suit in April 2004, it is likely that the Petitioner was not aware of that fact and, therefore, did not mention it in the writ petition. That he did not attempt to get the Suit restored is also a pointer in this direction. The fact nevertheless remains that the earlier writ petition filed by the Petitioner i.e. Writ Petition (C) No. 7118 of 2000 was disposed of by this Court on 5.8.2002 after noticing the fact of the suit having been filed and the application under Order 39 having been dismissed. Yet, by the order dated 5.8.2002 this Court issued the directions set out hereinbefore. Respondent No.3 was directed to take an appropriate decision in accordance with the law on the Petitioner's representation for return of the land in question to him. In light of the direction of this Court to the respondents to pass an order on the petitioner"s representation for restoration of possession, there was nothing left to be decided in the suit since the decision of the respondents pursuant to the order dated 5.8.2002 would constitute a fresh cause of action. The order dated 5.8.2002 passed by this Court has become final. In fact it has been purportedly complied with by the Respondents by the order dated 2.4.2003 passed by the Divisional Commissioner. In the circumstances, the plea of res judicata cannot possibly be raised by the respondents. It is accordingly held that the petition is not barred by res judicata. Validity of the petitioner"s claim to the land in question

19. The next issue concerns the title of the Petitioner to the land in question. The respondents have raised an objection to the petitioner describing the Khasra No.26/6/2 when in fact the Khasra No. of the land in question is 22/6/2. This has however been clarified by the Petitioner in the rejoinder that he had indeed purchased 990 sq. yards in khasra No. 22/6/2/2 through registered sale deeds. Therefore this objection of the respondents is to no effect. The main plea taken by

the Respondents is that since by the order dated 9.10.1980 passed by the SDM under Section 81 DLRA the land stood vested in the Gaon Sabha, it belonged to the Government and definitely not to the Petitioner. In order to examine this contention the said order dated 9.10.1980 requires to be understood. It reads as under: "Vide this Court order dated 21.1.80 u/s 81 of the DLR Act it was proved that Khasra Nos. 23/6/2, 7,8,9, 10/1 had been converted to non-agricultural use by the respondent thereby contravening the provisions of Delhi Land Reforms Act. The respondent/s were directed by the above order to convert the said Khasra Nos. back to agricultural use within three months failing which they were to be ejected from the above Khasra Nos. and their right on the above mentioned Khasra Nos. be extinguished. The patwari of the village through Tehsildar reported on 25.7.80 that the said Khasra Nos. have not been converted to an agricultural use by the respondent/s. I, therefore, order that the respondent/s stand ejected from the above Khasra Nos. and the said land be vested in the Gaon Sabha with immediate effect."

20. A perusal of the above order shows that it has been passed against the erstwhile owner/predecessor-in-interest of the Petitioner, Shri Hoshiar Singh. The Khasra Nos. indicated in the said order are not the same as the land in question. Even if it were to be assumed, as is sought to be explained by the Respondents, that this was a typographical error, it is plain that the order completely fails to notice the facts relevant to the land in Khasra No.22/6/2 viz., that a part of it stood acquired and has been assigned a sub-divided Khasra No. 22/6/2/1 whereas the unacquired portion of 1 bigha has been assigned Khasra No.22/6/2/2.

21. Significantly, the above order passed under Section 81 DLRA does not appear to have been acted upon by the Gaon Sabha by taking the consequential steps to recover possession of the land in question. If indeed the predecessor- in-interest of the petitioner continued to remain in unauthorised occupation as alleged notwithstanding the order passed under Section 81, then the Gaon Sabha should have filed a suit for ejectment under Section 84 of DLRA. The failure to take action under Section 84 would have resulted in the predecessor-in-interest getting certain rights in his favour in terms of Section 85 of DLRA vis-a-vis the land in question. It is clear that till the Petitioner purchased the land in question in 1989 and 1991, i.e., 11 years after the order under Section 81 DLRA was passed, Shri Hoshiar Singh, and not the Gaon Sabha, was in possession. Otherwise it is inconceivable that the Petitioner would buy the land in question. In fact as already noticed agreements to sell were first entered into and thereafter NOCs were obtained following which sale deeds were executed. While, it is impossible that the officials involved in these stages were unaware that the land stood vested in the Gaon Sabha by virtue of an order made under Section 81 DLRA, it is nobody"s case that the petitioner was aware of the Section 81 order and still purchased the land in question.

22. It is also not in dispute that the khatoni shows the ownership of Shri Hoshiar Singh and Shri Sher Singh till 1983-84. This strengthens the contention that the Respondents did not take action in terms of the order dated 7.8.1980 under Section 81 DLRA to recover possession of the land in question. The mere entry in the revenue record thereafter in respect of the land in question in favour of the Gaon Sabha may have been under the mistaken understanding that the land in question stood acquired when in fact it was not. This much has been clarified in this Court"s order dated 5.8.2002.

23. The order dated 5.8.2002 clarifies the factual possession as regards the land in question. The said order unequivocally recognises that 1 bigha and 10 biswas of land that has been acquired has been assigned khasra No. 22/6/2/1 whereas the land in question has not been acquired and bears khasra No. 22/6/2/2. This Court's direction was for the Respondents to take a decision on this 1 bigha of land and to dispose of Petitioner's representation seeking its possession. The reasons given by the Divisional Commissioner in the order dated 2.4.2003 rejecting the Petitioner's prayer for handing over possession proceeds on the basis that the land in question stood vested in the Gaon Sabha by virtue of the order dated 9.10.1980 passed under Section 81 DLRA. If indeed the order can be read, in view of the typopgraphical error, to cover Khasra No.22/6/2/2 as well, then Shri Hoshiar Singh"s continued occupation of the land in question thereafter would have been "unauthorised". The only valid method of recovering possession would have been for the Gaon Sabha to have initiated proceedings under Section 84 DLRA which it did not. This in turn led to the person in continued occupation, in this case Shri Hoshiar Singh and Shri Sher Singh acquiring valuable rights under Section 85 DLRA after the expiry of three years after 9.10.1980. The basis on which the Divisional Commissioner has proceeded in his order dated 2.4.2003, that the petitioner could not have validly purchased the land in question from Shri Hoshiar Singh in 1989 and 1991, is therefore unsustainable in law.

24. The demarcation report also indicates that the Petitioner did possess registered sale deeds in respect of the land in question. The change of the revenue records to reflect this had to await the decision on the demarcation. At the stage of the demarcation, the Revenue officials explained the failure to carry out the correction in the revenue record only on account of their erroneous understanding that the land vested in the Gaon Sabha. The explanation now offered by the Respondents that the demarcation was not routed through the Divisional Commissioner but was presented directly to the Patwari cannot invalidate the demarcation proceedings. These are proceedings in law and although they may not decide the question of title they are certainly relevant for determining the exact location of the land in question and the status as regards possession.

25. Further, in the face of the registered sale deeds in favour of the petitioner in respect of the land in question, which fact is not denied by the respondents, the entry in favour of the Gaon Sabha by virtue of the SDM"s order dated 9.10.1980, which has never been given effect to in accordance with law, cannot have a higher sanctity. The fact remains that no attempt has been made by the respondents to have the sale deeds declared illegal or void. In fact NOCs were given before the sale deeds were registered by the competent authorities. Also, the Revenue Authorities were very much present during the demarcation proceedings which records the fact that the petitioner has sale deeds in his favour.

26. The contention on behalf of the respondents that the land in question is not vacant and that there are encroachments and that the land has been built up on cannot take away the right of the petitioner here to re-claim its possession. There is also no answer to the point made by the petitioner that the colony in which the land in question is located i.e. Vashisht Park has in fact been regularised way back in 1983. Therefore at the time of execution of the agreements to sell in favour of the petitioner the colony was not an unauthorised one.

27. The vesting of the land in question in the Gaon Sabha by the order dated 9.10.1980 of the SDM itself being of doubtful validity in view of what has been explained hereinabove, coupled with the fact that no proceedings have been taken through all these years to effectuate that order by initiating proceedings under Section 84, a presumption ought to be drawn that the predecessor-in- interest of the Petitioner herein was able to and in fact, did convey valid title to the Petitioner. The claim of the petitioner to the land in question admeasuring 1 bigha in Khasra No.22/6/2/2 is well founded. This Court consequently concludes that the petitioner was illegally dispossessed from the land in question. The petitioner was, in view of what has been held above, not liable to evicted and in any event he was not evicted in accordance with the procedure established by law. The petitioner"s prayer for being put in possession

28. The next question that arises is whether the petitioner"s prayer to be restored possession of the land in question and his claim for compensation can be granted. The FCD has categorically stated that it is not in possession of the land in question. Therefore, while the Petitioner may have succeeded in showing that he has valid title to the land in question, there cannot be a direction to Respondent No.2 FCD to hand over its possession to the Petitioner. In its counter affidavit the stand of Respondent No.2 FCD is that "the land in question pertains to the Department of Revenue and this respondent has nothing to do with the land in question."

29. However, the stand of the GNCTD in their written submissions is that the land in question is in the possession of "a number of other persons for many years." They do not say that the Gaon Sabha is in possession. According to the

Respondents the land in question is not vacant and there are several encroachments in the land in question. It is not clear who these encroachers are. While the Petitioner denied the averments of the Respondents that the land is not vacant, he is also unable to categorically deny that there are encroachments. The demarcation proceedings contain a sketch map of Khasra No.22/6/2 but does not indicate who is in possession of Khasra No.22/6/2/2. The petitioner in his representation dated 2.5.2005 to the Deputy Commissioner claimed that the FCD was only "notionally in occupation of the land" and that "I am in physical possession of the land, my building material is lying on the said land and the boundary is to be constructed though the foundation have already been dug." Yet, in the present petition filed on 27.5.2006 the petitioner claimed that Respondent No.2 FCD "are not withdrawing from the unauthorised occupation of the petitioner"s land." Thus it is not very clear as to who is in possession of the land in question. Therefore the only course available is to issue certain directions in this regard as indicated hereafter.

30. As regards the claim for damages, this Court cannot in a petition under Article 226 possibly fix responsibility on individuals responsible for illegally dispossessing the petitioner from the land in question. This will involve examining oral and documentary evidence for which the present proceedings are not appropriate. Therefore, while declining this relief of damages in the present petition, the Court leaves it open to the petitioner to approach the civil court to claim damages against the respondents in accordance with law. In that event, it will also be open to the petitioner to invoke Section 14 of the Limitation Act 1963 to explain the delay in approaching the civil court.

31. In the circumstances, the following directions are issued: (a)Within a period of four weeks from today, and in any event not later than 8.10.2007, Respondent GNCTD should get the land in question i.e. land admeasuring 1 bigha in Khasra No.22/6/2/2, which has already been demarcated on 28.12.2005, surveyed in presence of the petitioner and ensure that the petitioner is put in possession of the said land to the extent it is vacant or occupied by any agency of the GNCTD including the FCD; (b)If the survey indicates that there are encroachers on the land in question, i.e. other than the GNCTD and its agencies including the FCD, then it would be open to the Petitioner to take appropriate steps to recover possession of the land in question in accordance with the law. (c)As regards the claim for damages, it will be open to the petitioner to approach the civil court for relief in the manner indicated in para 29. (d)The Respondents will pay to the petitioner costs of Rs.10,000 within a period of four weeks and in any event not later than 8.10.2007.

32. With the above directions, the writ petition and the applications are disposed of.

Sd/-

S.MURALIDHAR, J